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No. 98-853

IN THE

Supreme Court of the United States

OCTOBER TERM, 1998

JERRY TAYLOR and MARY TAYLOR,

Petitioners,

vs.

QUALITY HYUNDAI, INC., BANK ONE MILWAUKEE, N.A. and BANK ONE CHICAGO, N.A.,

Respondents,

-and-

DAVITA M. SMITH,

Petitioner,

vs.

DESI AUTO SALES, INC. and GUARDIAN NATIONAL ACCEPTANCE CORP.,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

BRIEF IN OPPOSITION FOR RESPONDENT GUARDIAN NATIONAL ACCEPTANCE CORP.

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QUESTIONS PRESENTED FOR REVIEW

I. The Truth in Lending Act provides that assignees of retail installment contracts may be liable for TILA disclosure violations only when the violation is "apparent on the face of the disclosure statement" and other documents assigned to them. Have all appellate courts to have considered the issue, including the Seventh Circuit below, and now the Eleventh Circuit, correctly rejected Petitioners' claim that assignee liability may be based on assignees' subjective knowledge of industry practices, rather than on what is objectively apparent on the face of the documents assigned?

II. By administrative rule, the Federal Trade Commission has long required a notice in all consumer contracts dealing generally with debtors' rights against holders of the contracts. Have all appellate courts to have considered the issue correctly decided that, in the TILA context, the statute's specific provision regarding assignee liability must be given effect over the generalized notice required by the FTC?

CORPORATE DISCLOSURE STATEMENT

Pursuant to Supreme Court Rule 29.6, the undersigned, counsel of record for Respondent Guardian National Acceptance Corp., states that Guardian National has no parent companies and no nonwholly owned subsidiaries.

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STATEMENT OF THE CASE

A. The Actual Issue before the Court

In their Petition for Writ of Certiorari, Petitioners Jerry and Mary Taylor and Davita M. Smith have framed the issues backwards, obscuring the question answered by the Seventh Circuit against them.[1] That question is a narrow one concerning the liability of assignees like Respondent Guardian National Acceptance Corp. under 15 U.S.C. § 1641(a) of the Truth in Lending Act. Does the statute's objective test, limiting an assignee's liability for a creditor's TILA violation to cases in which "the violation . . . is apparent on the face of the disclosure statement," mean what it says, or is there is an unstated subjective component to the test that requires a court to inquire into the subjective knowledge of assignees gleaned from their supposed knowledge of industry practices? The Seventh Circuit below, the Eleventh Circuit subsequently, and almost every district court that has considered the issue has agreed with Respondents' contention that the test is purely objective.

These courts also dismissed Petitioners' contention that the statute is in effect overridden by the Federal Trade Commission's "holder" notice, 16 C.F.R. § 433.2. Petitioners address the holder notice issue first, and devote most of their argument to it, attempting to escape what the courts have found crystal clear — that it is the statute, not the regulation, which determines assignee liability.

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1. The decision below is reported as *Taylor v. Quality Hyundai, Inc.*, at 150 F.3d 689. It is provided in the Appendix to Smith's Petition ("App.") and is referred to here as "App. __." The Petition concerns two cases which were consolidated for decision before the Seventh Circuit. *Taylor v. Quality Hyundai, Inc., et al.* (assignee Bank One) was decided by District Judge Norgle and *Smith v. DeSi Auto Sales et al.* was decided by District Judge Holderman. This brief is the response to the Petition of Guardian National Acceptance Corp., assignee in *Smith*.

B. Smith's Misstatement of Her Complaint

Smith bought a used car from DeSi. At the same time she bought an extended service contract ("ESC") for her car. The TILA disclosure statement showed a payment of $799 for "E.S.C." under "Amounts Paid to Others for You." App. 47 (Smith's Complaint, ¶47). But Smith's statement of purported fact in the Petition does not parallel her Complaint allegation. In the Petition, Smith alleges:

> DeSi **falsely represented** on the face of the retail installment contracts that they paid the *entire price* of the petitioners' extended warranties to the providers" . . . [but] in fact . . . DeSi **retained a significant portion of the price of the extended warranties as pure profit** and paid only a *fraction* of the price to the warranty providers.

Petition 4 (italicized emphasis in original; bolded emphasis supplied). In the Complaint, however, Smith did not explicitly allege a "false" representation or retention of part of the price as "pure profit;" she alleged only "DeSi did not pay the sum of $799 to the issuer of the extended service contract/warranty," "paid a small portion of the service contract fee to the warranty issuer" and "retained the balance of the charge," and made no more specific allegation. App. 47-48 (Smith's Complaint, ¶¶19, 21a and 21b).

The Petition also fails to acknowledge that, if DeSi retained part of the $799, the amount is unknown, precisely because the disclosure statement and other sales documents provided no basis for determining it. The face of the documents show only that DeSi paid $799 to the ESC provider.

Smith also alleged, at least in her Petition, that "the dealer **systematically charged** more for extended warranties to credit

customers than it charged to cash customers," contending this alleged practice violates TILA because the "extra markup for credit customers is a finance charge that must be disclosed as such." Petition 4 (emphasis supplied). In the Complaint, Smith's allegation was more limited, however: "DeSi and Dealers do not charge the same amount in cash and credit transactions for the same extended warranty or service contract [sic] **in all cases**." App. 50 (Complaint, ¶37, emphasis supplied).[2] Regardless of the frequency of the practice as alleged by Smith, there was no evidence in the record as to the practice at all.

Moreover, Smith nowhere alleges Guardian knew whether DeSi charged more for extended service contracts to credit customers than it did to cash customers. The only allegation in the complaint as to this practice is as to DeSi and Smith has never suggested any reason why Guardian should know anything about DeSi's practices with **cash** customers. Accordingly, as to Guardian, the hidden finance charge claim should not be presented in the Petition at all. Only the claim of inaccurate itemization pertains to Guardian.

C. Petitioners' Not Very Apparent Theory of the Case

Until the very last page of the Petition, Petitioners do not even refer to their theory of how assignees of retail installment contracts like Guardian might be liable under the statute, which states unequivocally that assignees are liable only for violations apparent on the face of the assigned documents. 15 U.S.C.

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2. In her brief in the Seventh Circuit, Smith's allegation on this point was different yet again. There she contended flatly that "DeSi charges more for service contracts or extended warranties in credit transactions than it does in comparable cash transactions." Smith Seventh Circuit Opening Brief at 5. Thus, Smith has variously alleged that the practice occurs in some cases (Complaint), in all cases (Seventh Circuit) and "systematically" (here).

§ 1641(a). That theory was revealed in Smith's Complaint, where Smith asserted Guardian "knew" DeSi retained a portion of the $799 it charged her "from its extensive experience in financing used car transactions [and] actual knowledge of the amounts which car dealers disbursed to the issuers of extended warranties." App. 55 (Smith's Complaint, ¶52).

Smith thus personified Guardian in alleging actual knowledge, treating the corporation as though it were a person. Smith never attempted, however, to allege that specific Guardian employees, including any employees who might have seen Smith's retail installment contract as it was being processed, had any "actual knowledge" of the discrepancy between what was shown on the TILA statement and what portion allegedly was remitted to extended warranty issuers.[3]

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3. In the Petition, even Smith's limited reference to her theory is overstated and disingenuous. In finally stating Smith's theory — "Ms. Smith's complaint alleges that Guardian had actual knowledge that a large percentage of the $799 was retained by the dealer as profit" (Petition 12, citing App. 55-56), Smith fails to disclose that the "actual knowledge" of Guardian she alleged was not in fact any "actual" knowledge as to her transaction, but instead what Guardian is alleged to have gleaned "from its extensive experience in financing used car transactions." App. 55 (Smith's Complaint, ¶52). And, again, in the Complaint, Smith did not allege that Guardian retained a "large percentage" of the $799 "as profit;" she said instead only that that "$799 was not paid to the issuer. . . ." App. 47 (Smith's Complaint, ¶19).

REASONS FOR DENYING THE WRIT

I.

THE FEDERAL CIRCUITS THAT HAVE CONSIDERED THE ISSUE AGREE THAT ASSIGNEES LIKE GUARDIAN ARE NOT LIABLE UNDER TILA BECAUSE THE DEALERS' POSSIBLE VIOLATIONS WERE NOT APPARENT ON THE FACE OF THE ASSIGNED PAPERS.

Gibson v. Bob Watson Chevrolet-Geo, Inc., 112 F.3d 283 (7th Cir. 1997) concerned the car dealer's TILA liability for the practice of including but not disclosing extended warranty upcharges as "amounts paid to others" on TILA disclosure statements. In *Gibson*, the Seventh Circuit held that the car dealer, the buyer's "creditor" in TILA parlance, may have violated TILA in two respects. 112 F.3d at 284. First, if it charged the buyer more for the extended service contract than it would have charged a cash customer, the undisclosed markup might be a hidden finance charge. *Id.* at 284-285. Second, if it listed as an "amount paid to others" on the TILA disclosure statement a larger number than the amount it actually paid to the provider of the extended service contract, it may be guilty of inaccurate itemization. *Id.* at 285.

As Petitioners acknowledge, however, the "question here is whether the petitioners can also hold the **assignees** liable for the TILA violations." Petition 4 (emphasis supplied). That question must be decided under the Truth in Lending Act, as amended:

> Except as otherwise specifically provided in this title, any civil action for a violation of this title or proceeding under section 108 which may be brought against a creditor may be maintained against any assignee of such creditor **only if the violation for**

> **which such action or proceeding is brought is apparent on the face of the disclosure statement,** except where the assignment was involuntary.

15 U.S.C. § 1641(a). The statute then includes a sentence to help explain the meaning of "apparent on the face of the disclosure statement:"

> For the purpose of this section, a violation apparent on the face of the disclosure statement includes, but is not limited to (1) a disclosure which can be determined to be incomplete or inaccurate from the face of the disclosure statement or other documents assigned, or (2) a disclosure which does not use the terms required to be used by this title.

Id.

At the time of the Seventh Circuit decision (July 20, 1998), almost every district court concurred with Guardian's position that claims against assignees may be based only on objective violations — those "apparent" on the face of the contract — and cannot be based on a subjective test directed at knowledge. App. 5.[4] The Eleventh Circuit has since concurred. *Ellis v.*

4. The Seventh Circuit noted the following district court opinions: *Taylor v. Bob O'Connor Ford, Inc.*, 1998 WL 177689 (N.D. Ill. 1998); *Brister v. All Star Chevrolet, Inc.*, 986 F. Supp. 1003 (E.D. La. 1997); *Kinzel v. Southview Chevrolet Co.*, 892 F. Supp. 1211, 1217 (D. Minn. 1995). App. 5. *See Ritter v. Durand Chevrolet, Inc.*, 932 F. Supp. 32 (D. Mass. 1996) (assignee BayBank dismissed from TILA count). Other unreported decisions in the Northern District of Illinois include *McPhan v. Geo R. Gibson Chevrolet, Inc.*, 1996 WL 685449 (N.D. Ill. Nov. 25, 1996) (assignee National City Bank, Indiana dismissed from case); *Lindsey v. Ed Johnson Oldsmobile, Inc.*, 1996 WL 411336 (N.D. Ill. (Cont'd)

General Motors Acceptance Corporation, 160 F.3d 703, 709 (11th Cir. 1998). Before a 1980 amendment, assignees could be liable for TILA violations based on their "knowledge" of the violation,[5] so "the amendment therefore narrowed considerably the potential scope of assignee liability." App. 5.[6]

The Seventh Circuit, the Eleventh Circuit and almost all district courts have rejected the gloss Smith would have the

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July 19, 1996), *reconsideration denied* 1996 WL 529417 (Sept. 13, 1996) (assignee Chicago Acceptance Corp. dismissed from case); *Gray v. Sunstar Acceptance Corp.*, No. 96 C 186 (N.D. Ill. June 17, 1996) (assignee Sunstar Acceptance Corp. dismissed from case); *Alexander v. Continental Motor Werks, Inc.*, 1996 WL 79403 (N.D. Ill. Feb. 15, 1996), *reconsideration denied* May 7, 1996 (assignee Eagle Finance Corp. dismissed from case).

5. Originally, Section 1641 did have a subjective component:

> [I]n any action or proceeding by or against any subsequent assignee of the original creditor **without knowledge to the contrary by the assignee** when he acquires the obligation, written acknowledgment of receipt by a person to whom a statement is required to be given pursuant to this subchapter shall be conclusive proof of the delivery thereof and, unless the violation is apparent on the face of the statement, of compliance with this part.

(Emphasis supplied). Congress reformed TILA in 1980 and, among other changes, removed the phrase "without knowledge to the contrary by the assignee" from § 1641(a).

6. The Seventh Circuit cited H.R. Conf. Rep. No. 96-842, at 80-81 (1980), *reprinted in* 1980 U.S.C.A.N. 298, 310-11 and S. Rep. No. 96-368, at 32-33 (1979), *reprinted in* 1980 U.S.C.A.N. 280, 296 for this conclusion. App. 5.

Court impose on the statute, which would require inquiry into the assignee's knowledge of the creditor's (seller's) industry. Smith's entire position is that Guardian has "knowledge to the contrary" of the disclosure statement's representation that $799 was paid to the provider of the extended warranty. But Congress removed that phrase from § 1641(a) in 1980 and the Seventh Circuit and the other courts have correctly deferred to that legislative decision.

In contending the Seventh Circuit "fabricated its own standard" for determining when a violation is "apparent on the face of the contract," Petition 11, Petitioners do not shrink from distorting and exaggerating their own claims to this Court, as discussed above. Again, they contend they

> alleged that the holders in this case, Bank One and Guardian, *knew* that the figures in the boxes labeled "amounts paid to others" on petitioners' contracts were false. For example, Ms. Smith's complaint alleges that Guardian had actual knowledge that a large percentage of the $799 was retained by the dealer as profit.

Petition 11-12, citing App. 55-56. But in her Complaint, at "App. 55-56," Smith's allegation of what Guardian "knew," and what Guardian's "actual knowledge" was, was much weaker and less specific. The Complaint merely alleged general knowledge of industry practices "from [Guardian's] extensive experience in financing used car transactions [and] actual knowledge of the amounts which car dealers disbursed to the issuers of extended warranties." App. 55 (Smith's Complaint, ¶52).[7]

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7. The difference between the petition and the specific complaint allegation as to the $799 is pointed out at page 2 above.

Perhaps Smith does not reveal the source of Guardian's alleged "knowledge" to this Court because her substantiation of such knowledge before the Seventh Circuit was so lame. She relied there on a flat assertion that the practice is "well known in the automobile financing industry," citing as support a New York attorney general report based on 1989 data report from car manufacturers. Smith's Seventh Circuit Opening Brief at 17.

Although her Petition disingenuously suggests Guardian "knew" about her specific retail installment contract, it was instead from her premise that Guardian knew about industry practice that Smith simply inferred Guardian therefore knew DeSi did not pay $799 to the provider of Smith's extended warranty: "[I]t is apparent on the face of a Retail Installment Contract stating that a large amount is disclosed to a third party that the statement is inaccurate." Smith's Seventh Circuit Opening Brief at 19. Stated otherwise, Smith told the Seventh Circuit that every time a Guardian employee receives a retail installment contract and disclosure statement, Guardian "knows" the amount stated for any extended warranty is inaccurate if it is "a large amount."

The Seventh Circuit wisely rejected this sophistry:

> Even though we do not assume that assignees approach their tasks with blank minds, we cannot agree that awareness of the practices of some creditors can be equated to knowledge that a particular disclosure on a particular TILA form is inaccurate or incomplete. These are good cases in point. Suppose that 75%, or even 90%, of all automobile dealers in the greater Chicago area engage in the practice about which the plaintiffs are complaining. That still does not mean that an

> employee of a bank or other financial institution could tell, simply by looking at the face of the documents assigned, whether the particular TILA statement before her was inaccurate or incomplete. One out of four, one out of ten, might be perfectly accurate. In effect, the rule for which the plaintiffs are arguing would impose a duty of inquiry on financial institutions that serve as assignees. Yet this is the very kind of duty that the statute precludes, by limiting the required inquiry to defects that can be ascertained from the face of the documents themselves.

App. 8-9.[8]

Ellis, supra involved virtually the same issues and the Eleventh Circuit followed the Seventh Circuit. The Ellises' retail installment contract, assigned to GMAC, listed an amount paid to "Mechanic" for an extended warranty and the Ellises claimed that only a small part of the listed amount was paid to "Mechanic," with the rest retained by the Ellises' dealer. The Eleventh Circuit, like the Seventh Circuit, refused to speculate about GMAC's subjective actual knowledge, focusing instead on what was objectively apparent on the face of the disclosure statement. *Id.* at 709. The Eleventh Circuit agreed that TILA

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8. In this passage, the Seventh Circuit also implicitly recognized the burden Smith's subjective test would impose on assignees like Guardian. Smith's test, in any industry where it can be alleged that all or most sellers engage in a practice possibly actionable under TILA, would leave assignees like Guardian two choices: (1) police and reform all sellers with whom it deals; or (2) stop lending in that industry. But this cannot be what Congress intended when it rewrote Section 1641 in 1980. The change in Section 1641(a) signaled to lenders that they need **not** continually audit their assignors' every practice. And certainly Congress was not trying to make it impossible for all but the wealthy to buy a car.

does not "impose a duty of inquiry on financial institutions that serve as assignees." *Id.*[9]

Smith's contention that the Seventh Circuit created a standard for apparent violations that "does not exist" (Petition at 12) is fanciful, as demonstrated by the very legislative history Smith quotes in the Petition. In the first place, the Seventh Circuit itself quoted the statute's definition of "apparent" violations. App. 8, quoting 15 U.S.C. § 1641(a) (quoted at 6 above). Smith quotes legislative history to virtually the same effect. Petition 11. Smith fails to explain how the holding of the Seventh Circuit "contravenes" those definitions, particularly when the Seventh Circuit held that assignees may be liable under Section 1641(a) for "violations that a reasonable person can spot on the face of the disclosure statement or other assigned documents." Petition 11, quoting App. 9.

In conclusion, under the statute, assignee liability can only be based on whatever appears on the face of the assigned documents. There was no "apparent" violation on the Smith contract assigned to Guardian. The Seventh Circuit correctly held, therefore, that Guardian could not be liable to Smith. App. 9.

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9. The Eleventh Circuit's analysis brings to mind Judge Wood's comparison to letter to credit law for the Seventh Circuit in the decision below.

> A useful analogy is the duty of banks to review documents presented under a letter of credit. Like an assignee bank reviewing a TILA statement, a bank reviewing a letter of credit is responsible for noticing facial irregularities such as statements that are illegal, impossible, or in conflict with other terms. . . . [citation]. But in neither instance does the bank have a duty to seek out additional information before it makes its own decision to accept the tender of the documents, or to accept the assignment with the protection afforded by § 1641(a).

App. 9.

II.

FTC-REQUIRED LANGUAGE THAT IS PART OF A CONTRACT BY FORCE OF LAW MUST BE READ IN LIGHT OF OTHER LAWS MODIFYING ITS REACH AND THE SEVENTH CIRCUIT CORRECTLY HARMONIZED THE REGULATION WITH THE STATUTE.

Petitioners' highly truncated discussion of Section 1641(a) does not appear until the very end of the Petition. Petitioners focus instead on a regulation issued by the Federal Trade Commission which predated the amendment of the statute expressly limiting assignee liability. This is no accident, for it permits Smith to ignore the fundamental proposition, recognized by all appellate courts to have considered the issue, that, to the limited extent the statute and the regulation are inconsistent, the statute must prevail. App. 5; *Ellis, supra*, 160 F.3d at 709.

The 1980 Amendment to Section 1641(a) was passed five years after the FTC required in a regulation that a notice concerning holder liability must appear on all consumer contracts. That notice appeared on DeSi's retail installment contract with Smith, as assigned to Guardian:

> ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED PURSUANT HERETO OR WITH THE PROCEEDS HEREOF.

16 C.F.R. § 433.2 (the "Holder Notice"), Petition 6.

Simply, as the Seventh Circuit found, the Holder Notice "is not the last word on this subject." App. 4. At the time of the Seventh Circuit's decision, almost "every district court has agreed" with Guardian's position that "the unmistakable effect of the 1980 amendment is to trump the FTC's Holder Notice." App. 5. The Eleventh Circuit has now agreed as well. 160 F.3d at 709.

The Seventh Circuit rejected Smith's contention below (but not referred to in the Petition) that, by accepting the assignments containing the Holder Notice, Guardian somehow "waived" its defense under Section 1641(a). App. 6; *accord, Ellis*, 160 F.3d at 709 ("the only evidence of GMAC's purported intent to relinquish TILA's protections is the language that the FTC mandates be inserted into every consumer contract"). Further, the court found that the statutory amendment did not rob the Holder Notice of its utility as to claims against assignees:

> As a legally required part of every consumer financing contract, the Holder Notice continues to perform an important function even in the contracts between the plaintiffs and their respective assignees. If the cars they purchased turn out to be lemons and they assert a right to withhold payment against the sellers, they may also assert the same right against the assignees.

App. 6; *accord, Ellis*, 160 F.3d at 709, citing the Seventh Circuit ("the provision continues to fill a valuable role by reiterating the right of buyers to withhold payment from sellers or assignees, if the cars they purchased turned out to be lemons").

The Seventh Circuit saw the flaws in Smith's alternate contention below that Section 1641(a) and the Holder Notice do not conflict (Petition 8) because Congress did not provide

in the statute that assignees were exempt from FTC regulations (such as the Holder Notice) and the FTC itself has not amended the Holder Notice since the statute was amended.

> Neither of these points is persuasive. There is no reason for Congress expressly to address regulatory language that will become (in part) superseded by subsequent legislation; it is the responsibility of the agency to confirm its rules to any pertinent new laws. *Cf. United States v. Larionoff*, 431 U.S. 864, 873 & n. 12 (1977). As for the lack of change in the rule, we have already noted that the Holder Notice continues to allow the debtor to raise many claims and defenses against the assignee that he or she may have against the original seller; § 1641(a) limits only certain TILA claims.

App. 7.

The Seventh Circuit also easily rejected Smith's contention that Section 1641(a) limits only direct claims against the assignee that may be asserted without the procedural and damages limitations in actions against the dealer, as provided in 15 U.S.C. § 1640. Petition 9-10.

> The problem with this argument is straightforward: nothing in §1641 supports it. Section 1641 applies to "any civil action for violation of this subchapter" (of which both §1640 and 1641 are a part), which surely encompasses actions that implicate the procedural and damages rules of §1640.

App. 7.

Petitioners suggest that, "[u]nder the Seventh Circuit's opinion . . . Congress has promulgated a statute that *forces parties to include false statements on private contracts.*" Petition 5 (emphasis in original). This needlessly dramatic hyperbole is spurious for at least two reasons. First, the Holder Notice is not "included" by the parties to the contract in the sense that they include agreed-upon terms and conditions. As the Seventh Circuit held, the Holder Notice,

> even though contained within the contract, was not the subject of bargaining between the parties, and indeed could not have been. It is part of the contract by force of law, and it must be read in light of other laws that modify its reach.

App. 6-7, *citing, inter alia, Robbins v. Bentsen*, 41 F.3d 1195, 1198 (7th Cir. 1994); *accord, Ellis*, 160 F.3d at 709.

Secondly, when rule-required text is inconsistent with a statute, the statute must prevail, but that does not render the required text "false."[10] Far from being false, "[t]he Holder

10. *Robbins, supra* involved a difference in language between Title VII and an EEOC regulation pertaining to the time for filing suit against the government after administrative determination of a discrimination charge. The statute provided that a party must file suit against the government within 90 days after receipt of the notice of "final action" taken by the agency or 180 days after filing the charge if the party was aggrieved by the "final disposition." The EEOC had provided in regulations that the suit could be filed 90 or 180 days after receipt of a "final decision" and defined that term as including findings on the merits on all issues raised. Plaintiff had received a notice terminating the processing of her charge but no decision on the merits, so she contended she had not received the "final decision" (the regulation language) triggering the beginning of the limitations period. The Seventh Circuit held, however, that plaintiff had received the "final action" and "final disposition" referred to in the statute; the regulation's requirement of (Cont'd)

Notice continues to perform an important function even in the contracts between the plaintiffs and their respective assignees." App. 6, citing examples.

As the Seventh Circuit suggested, if the FTC perceives a conflict between the Holder Notice and Section 1641(a) as amended, it should modify the Holder Notice to conform with the statute. App. 7. In the meantime, the lower courts have struck the right balance with respect to the interplay of Section 1641(a) and the FTC's Holder Notice.

III.

CONCLUSION: THERE ARE NO REASONS FOR GRANTING THE WRIT.

The two circuits that have considered the issues presented by the Petition are in agreement. Their holdings are straightforward. Congress meant what it said. Having amended Section 1641(a) to provide that assignees could be liable for violations "only if the violation . . . is apparent on the face of the disclosure statement," a court may not infer that liability could be based on what a subjective inquiry into assignee knowledge of seller practices — Petitioners' theory of liability — might reveal.

Further, the circuits followed the inarguable rule that statutes control over inconsistent regulatory requirements and satisfactorily harmonized the two in these cases. Petitioners' efforts to obscure the issues presented by this case notwithstanding, the issues are simple ones correctly decided by the lower courts. Petitioners have failed to demonstrate any of the traditional grounds for granting certiorari.

(Cont'd)
findings on the merits were not the only "final action" triggering the time period. *Id.* at 1198. This did not render the regulation's provisions or the information the regulation gave to the putative plaintiff "false;" they were instead merely unenforceable to the extent they were in conflict with the statute's provisions.

CONCLUSION

Respondent Guardian National Acceptance Corp. respectfully requests that the Petition be denied.

Respectfully submitted,

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